No. 73-794

In the Supreme Court of the United States

OCTOBER TERM, 1973

NATIONAL ASSOCIATION OF MOTOR BUS OWNERS, ET AL.,
PETITIONERS

v.

CLAUDE S. BRINEGAR, SECRETARY OF THE DEPARTMENT OF TRANSPORTATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a–38a) is reported at 483 F. 2d 1294. The order of the district court (C.A. App. 2a) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on July 26, 1973. A timely petition for rehearing was denied on August 22, 1973 (Pet. App. 52a). The petition for a writ of certiorari was filed on November 16, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether Section 204 of the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1424, which provides that "[n]o person shall * * * deliver for introduction in interstate commerce, any tire * * * which has been regrooved," applies to owners of bus or truck fleets who regroove their own tires.

2. Whether the Section 204 prohibition applies to intrastate motor carriers.

STATUTE AND REGULATION INVOLVED

1. Section 204 of the National Traffic and Motor Vehicle Safety Act of 1966, 80 Stat. 729 as amended, 15 U.S.C. 1424, provides in part:

> (a) No person shall sell, offer for sale, or introduce for sale or deliver for introduction in interstate commerce, any tire or motor vehicle equipped with any tire which has been regrooved, except that the Secretary may by order permit the sale of regrooved tires and motor vehicles equipped with regrooved tires which he finds are designed and constructed in a manner consistent with the purposes of this Act.
>
> * * * * *
>
> (c) For the purposes of this section the term "regrooved tire" means a tire on which a new tread has been produced by cutting into the tread of a worn tire.

2. 49 C.F.R. 569.7 provides in part:

> (a) Regrooved Tires: No person shall sell, offer for sale, or introduce for sale or deliver for introduction into interstate commerce re-

grooved tires produced by removing rubber from the surface of a worn tire tread to generate a new tread pattern unless the tires conform to the requirements set forth below:

* * * * *

(b) Any person who regrooves tires and leases them to owners or operators of motor vehicles and any person who regrooves his own tires for use on motor vehicles is considered to be a person delivering for introduction into interstate commerce within the meaning of this part.

STATEMENT

Congress enacted in 1966 the National Traffic and Motor Vehicle Safety Act, 80 Stat. 718, *et seq.*, as amended, 15 U.S.C. 1381, *et seq.*, for the purpose of "reduc[ing] traffic accidents and deaths and injuries to persons resulting from traffic accidents" (15 U.S.C. 1381). Under Title I of that Act, the Secretary of Transportation is directed generally to establish safety standards for motor vehicles and items of motor vehicle equipment (Section 103(a), 15 U.S.C. 1392(a)). Title II of the Act, captioned "Tire Safety," provides specific directions to the Secretary concerning tires. Section 204(a), 15 U.S.C. 1424(a), provides that "[n]o person shall sell, offer for sale, or introduce for sale or deliver for introduction in interstate commerce" any regrooved tire,[1] "except that the Secre-

[1] Regrooved tires are tires "on which a new tread has been produced by cutting into the tread of a worn tire" (Section 204(c), 15 U.S.C. 1424(c)). Tires designed to be regrooved have extra rubber between the base of the original tread and the tire cord, so that new grooves can be cut into this excess rubber

tary may by order permit the sale of regrooved tires * * * which he finds are designed and constructed in a manner consistent with the purpose of this Act."[2]

Pursuant to this authority, the Federal Highway Administrator[3] promulgated regulations prescribing safety standards for regrooved tires and prohibiting the sale, offer for sale, introduction for sale, or delivery for introduction into interstate commerce, of regrooved tires that do not conform to those standards (49 C.F.R. 569.7(a)). The effect of the regulations is

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when the original treads are worn (C.A. App. 39a). Such tires are manufactured for the truck, bus, and taxi industries and are not distributed for use on private automobiles (C.A. App. 39a, 40a, 52a, 55a). Retreading and recapping, which are more familiar methods of rejuvenating old tires, involve the addition of new rubber to the tires.

"C.A. App." refers to the appendix in the court of appeals, a copy of which we lodged with the Clerk of this Court, in connection with our petition for a writ of certiorari in this case, No. 73-974.

[2] Section 204 evolved from a virtually identical provision in a tire safety bill that passed the Senate but was not acted on in the House during the second session of the 89th Congress (S. 2669, 89th Cong., 2d Sess.). This provision, which was originally limited to passenger cars, was incorporated into the broader Traffic and Motor Vehicle Safety Act, with its expanded definition of motor vehicle, during a conference on differing versions of the proposed Act (H. Rep. No. 1919, 89th Cong., 2d Sess.). The Act defines motor vehicle to include "any vehicle driven or drawn by mechanical power manufactured primarily for use on the public streets" (Section 102(3), 15 U.S.C. 1391(3)).

[3] The Secretary of Transportation initially delegated his authority under the Act to the Federal Highway Administrator (32 Fed. Reg. 5606-5607). The authority was subsequently delegated to the National Highway Traffic Safety Administrator (49 C.F.R. 501.2(a)).

thus to permit the sale and non-sale delivery of only those regrooved tires that conform to the standards.

The regulations also provide that "[a]ny person who regrooves tires and leases them to owners or operators of motor vehicles and any person who regrooves his own tires for use on motor vehicles is considered to be a person delivering for introduction into interstate commerce" (49 C.F.R. 569.7(b)). The effect of that provision is to apply the Secretary's safety standards to the many operators of commercial buses, trucks, and taxicab fleets who purchase or lease tires that are not "regrooved" but "regroovable,"[4] and who then either regroove the tires themselves or have the leasing company do the regrooving.

Petitioners, representing operators of intercity buses, local transit lines, and the trucking industry, brought this action[5] in the United States District Court for the District of Columbia seeking to enjoin the enforcement of the regulations on the ground, *inter alia,* that the Act was not intended to cover any person who regrooves his own tires or whose motor carrier operations are wholly intrastate. The district court, on cross-motions for summary judgment, upheld the regulations.

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[4] A "regroovable tire" is one "designed and constructed with sufficient tread material to permit renewal of the tread pattern or the generation of a new tread pattern" (49 C.F.R. 569.3 (c)).

[5] Some of the petitioners intervened as plaintiffs after the initial complaint was filed.

The court of appeals affirmed the judgment of the district court in all respects save one.*

ARGUMENT

The issues presented by this petition were correctly decided by the court of appeals, and there is no reason for further review.

1. Petitioners contend (Pet. 8–10) that commercial bus and truck operators who regroove their own tires must be exempted from the Act's coverage, because as self-regroovers they are "consumers," and the Act was intended to protect, not regulate, consumers. But Section 204 has a broader purpose than merely ensuring that commercial operators who purchase regroovable tires are protected as consumers. It is designed to protect the traveling public by regulating the quality and safety of regrooved tires that are delivered for introduction in interstate commerce. In regrooving their own tires, commercial operators are acting, in effect, as manufacturers of the tires at which the statute is aimed.

Petitioners rely (Pet. 9) on the "first purchase" exemption of Section 108(b)(1), 15 U.S.C. 1397(b)(1). That section excludes from Title I's prohibition against sales and non-sale deliveries of motor vehicles and items of motor vehicle equipment that do not conform to the Secretary's safety standards, deliveries

* A majority of the court held (Pet. App. 18a–19a) that the statute does not authorize the Secretary to permit the non-sale delivery of regrooved tires that meet the Secretary's safety standards. We have filed a petition for a writ of certiorari (No. 73–974) to review that portion of the court of appeals' judgment.

"after the first purchase * * * in good faith for purposes other than resale * * *." As the court of appeals correctly held, however, the Title I exemption does not apply to Title II. "[W]e find nothing to indicate that Congress intended the first purchase exception to be carried over to section 204" (Pet. App. 16a).

The reason for the difference is that many of the tires to which Section 204 is directed are purchased as "regroovable" and are "regrooved" later by the purchaser. An exemption for deliveries after the first purchase of *regrooved* tires thus would not benefit most self-regroovers unless it were construed to apply to deliveries after the first purchase of *regroovable* tires. In that case, however, the exemption would insulate from safety regulation nearly all commercially-used regrooved tires. This would directly contravene the intent of Congress to protect the public against unsafe regrooved tires.

2. Petitioners contend (Pet. 10–11) that the court of appeals' ruling leads to absurd results. They complain that, under the court's reading of the statute, regrooved tires that conform to the Secretary's safety standards may be sold but may not be "delivered," and that this has the effect of permitting commercial operators to regroove tires for sale but not for use on their own vehicles, despite their conformance with the standards.

We agree that the result distorts the statutory purpose. But the solution is not, as petitioners urge, to restrict the scope of the Act's prohibition against unsafe regrooved tires. Rather, as we have argued in our peti-

tion for a writ of certiorari in this case (No. 73-974), it is to recognize that regrooved tires that conform to the safety standards may be delivered *or* sold—*i.e.*, may be used on the regroover's own vehicles.

3. Petitioners argue (Pet. 11–13) that their regrooved tires are immune from safety regulation under Section 204, because, as certificated motor carriers, they are subject to safety regulations issued under the Interstate Commerce Act. Petitioners point to no inconsistency between the two Acts or the regulations issued thereunder; instead, they invoke only a "potential conflict" between them (Pet. 13).

But there is no reason to anticipate a conflict between regulations governing the quality of regrooved tires prior to their use and separate regulations governing their use by certificated carriers, particularly when both statutes are administered by the Department of Transportation. Furthermore, the court below correctly held (Pet. App. 14a–15a) that the legislative history of Section 204 contradicts petitioners' suggestion that Congress intended to exempt bus and truck operators from the provisions of that section.

4. Petitioners do not claim that Congress is without power to regulate the delivery of regrooved tires for use by intrastate motor carriers. They contend only that Congress did not intend to exercise that power in Section 204 of the Act (Pet. 13–16). That contention was thoroughly considered and correctly rejected by the court of appeals (Pet. App. 21a–33a),[1]

[1] Parts I–III of Judge Robinson's opinion is the opinion of the court with respect to this issue.

on whose opinion we rely. As the court stated (Pet. App. 29a–30a):

> It cannot be gainsaid that a motor vehicle on an intrastate trip, no less than one proceeding interstate, is a constant and serious threat to the traffic movement on its route if its tires are unsafe. The tire that fails is selective neither of the vehicles nor the occupants which it is likely to victimize; an untrustworthy tire jeopardizes closeby interstate and intrastate travel alike. In light of the stated legislative goal of "reduc[ing] traffic accidents and deaths and injuries to persons resulting from traffic accidents," it is incongruous that Congress would restrict the use of regrooved tires on vehicles journeying interstate and at the same time leave closeby vehicles bound intrastate wholly free to use them. * * *

The statutory prohibition against the delivery of nonconforming regrooved tires "for introduction in interstate commerce" (Section 204(a), 15 U.S.C. 1424(a)) must be read, as the court held, "as an injunction, not merely against the operation of such tires and vehicles on interstate journeys, but also against their 'deliver[y] for introduction' into the stream of interstate traffic" (Pet. App. 26a).

5. Finally, petitioners argue (Pet. 17) that operators of buses and trucks who regroove their own tires cannot be said to "deliver" those tires for introduction in interstate commerce. But the court of appeals correctly held that "Congress was referring not to a transfer of legal possession or control, but to any physical transfer or movement of a regrooved tire

for the purpose of introducing it in interstate commerce" (Pet. App. 15a). To read "deliver" the way petitioners contend it must be read would exempt from the Secretary's safety regulation all the tires that are regrooved by operators for use on their own vehicles. There is no basis for supposing that Congress meant to leave so wide a gap in the Act's coverage.

The Secretary's contemporaneous construction of the statutory language is entitled to great weight (*Udall* v. *Tallman*, 380 U.S. 1, 16), and petitioners have not shown that the construction is an unreasonable one.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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